

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 04-10117-RWZ

UNITED STATES OF AMERICA

v.

DARREN FRANKLIN

ORDER

September 9, 2005

ZOBEL, D.J.

On April 14, 2004, the government charged defendant Darren Franklin in a sealed indictment with three distributions of cocaine base, in violation of 21 U.S.C. § 841(a)(1). Franklin was arrested on April 15, 2004, outside the residence of his girlfriend, Fania Hemingway. The police subsequently searched Franklin's vehicle and Hemingway's apartment. In support of his motion to suppress evidence seized from his automobile and from Hemingway's apartment, Franklin asks this Court to hold an evidentiary hearing. With respect to the search of the apartment, the issue is moot since the government does not seek to introduce evidence seized therefrom. (Gov't Opp. 21 n.11; Def.'s Reply Br. 1 n.1). With respect to the search of the car, the issues are (1) whether Franklin consented to the search of his automobile; (2) whether the police nevertheless had probable cause to search the vehicle under the automobile exception to the Fourth Amendment, see United States v. McCoy, 977 F.2d 706, 710 (1st Cir. 1992); and (3) whether the evidence seized from the car is nevertheless

admissible under the doctrine of inevitable discovery, see United States v. Scott, 270 F.3d 30, 42 (1st Cir. 2001).

Defendant's affidavits are sufficiently specific to raise factual issues as to both (1) whether the police obtained Franklin's consent to search the car, and (2) whether probable cause existed to conduct that search, calling into question the applicability of both the automobile exception and inevitable discovery doctrine. An evidentiary hearing is therefore warranted concerning that search. See United States v. Lewis, 40 F.3d 1325, 1332 (1st Cir. 1994).

Accordingly, defendant's motion for an evidentiary hearing as to the search of his automobile is granted.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE